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Moments in History

Commemorating Women's Role in Canadian History



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Women's
Directorate

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The first in a series.

A Very Personal Cause: the Story Behind the Person's Case

It would be absurd to ask a woman today if she thought of herself as a person. But only 63 years ago women weren't considered persons — at least not in the eyes of the law.

1929 is the year history books tell us the great depression began. What most of them don't mention is that October 18 of that year marks a landmark legal decision for Canadian women.

On that day, speaking a continent away, a bewigged British Lord delivered a judgment on behalf of the Privy Council in London, England: "The exclusion of women from all public offices is a relic of days more barbarous than ours," he said. With these words, he cleared the way for Canadian women to be appointed to the Senate and thus deemed them to be full-fledged "persons" under the law. Today, it seems so self-evident. But it was far from that. The ruling was the culmination of a 13-year campaign of letters and

speeches, petitions and articles spearheaded by a determined Canadian woman, Judge Emily Murphy. The facts of the case may be familiar to some, but they're easily forgotten when we have grown used to taking their outcome for granted.

The stage is set

On her first day on the bench as Alberta police magistrate, Emily Murphy happened to deliver a stiff sentence to a bootlegger. The man's lawyer, incensed by the verdict, challenged her authority, shouting, "You're not even a person. You

have no right to be holding court!" Although Judge Murphy's ruling was later upheld by the Supreme Court of Alberta, further challenges to her authority led her to undertake a bold step. She decided to test the federal interpretation of the law by launching a campaign to have a woman appointed to the Senate. After all, Section 24 of the British North America Act stated that, "the Governor General shall... summon qualified Persons to the Senate; and... every Person so summoned shall become and be a Member of the Senate and a Senator." If a woman became a Senator, wouldn't that prove that women were indeed persons?

1929 The Person's Case signalled a huge victory for the women of Canada. Those who wanted to enter politics could now be appointed to the Senate. But that didn't mean women would have an easy time finding their way into Parliament's Upper Chamber. For while laws had changed, attitudes hadn't.

1992 Women make up 52% of the population — yet they continue to be underrepresented in Canada's decision-making institutions.

- * Women hold 15 out of a total of 104 seats in the Canadian Senate.
 - * Women hold 40 seats out of a total of 296 in the House of Commons.
 - * Women hold two seats out of a total of nine on the Supreme Court of Canada.
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October is Women's History Month

Seeking a Senate seat

The campaign by women's organizations to gain a Senate seat for a woman spanned more than a decade, but in the end it proved futile. Although by 1920 most Canadian women had been given the right to vote, under British Common Law, they were not "persons in matters of rights and privileges." This was reason enough for the administrations of both Prime Ministers Arthur Meighen and Mackenzie King to turn down the women's requests of a seat in the Senate.

Challenging the law

By 1927, discouraged by the failure, Emily Murphy decided on a change of strategy. She had learned earlier, that Section 60 of the Supreme Court Act permits any "five interested persons" to petition the government for a ruling on a constitutional point. Together with four suffragist colleagues, Nellie McClung, Louise McKinney, Henrietta Muir Edwards and Irene Parlby, she requested an interpretation on just who were "persons" under the British North America Act. The argument was heard in the Supreme Court of Canada on March 14, 1928. The verdict, delivered five weeks later, was a bitter disappointment. The court had ruled against them!

Going all the way to the top

Convinced more that ever about the justice of their cause,

the women, who came to be known as "the Famous Five," took their case to the highest court in the land, which at that time was the Privy Council in London, England. This time they would get a taste of victory. On October 18, 1929, Lord Sankey, the Lord Chancellor of the day, overruled the Supreme Court of Canada with the words: "... and to those who ask

why the word [persons] should include females, the answer is, why should it not?"

That night at 3 a.m. Emily Murphy was awakened by a long-distance call from London. The story has it that she then proceeded to dance around the house in her flannelette nightgown proclaiming the news to her family: "We've won! We've won!"

And They Also Won!

1937 Dorothea Palmer, an employee of the Parents' Information Bureau, who works in a poor Ottawa suburb, is acquitted of distributing birth-control information.

1973 Jeanette Lavell and Yvonne Bédard, two native women take their case before the Supreme Court of Canada. They allege that the Indian Act discriminates against them since, unlike native men, native women lose their Indian status, with all its rights and privileges, when they marry non-natives. Although the court rules against them, largely because of their efforts, in 1985, the Indian Act is amended.

1975 Irene Murdoch, an Alberta ranch-wife, fails to be awarded a fair share of their family farm upon the dissolution of her 25-year-old marriage. The angered reaction to this Supreme Court decision forces the provinces to revise laws governing family property.

1980 The Federal Human Rights Commission awards a \$2.3 million settlement to women librarians in what is the first major case to establish the principle that different work can still be work of equal value.

1987 Justine Blainey, a 12-year-old girl, wins the right to play on a boys' hockey team when Ontario Human Rights Commission rules that: "Discrimination on the basis of sex in athletic events is unlawful in Ontario."

1989 Two Winnipeg waitresses, Diana Janzen and Tracy Govereau, are fired after being sexually harassed by the cook. Their case comes before the Supreme Court of Canada, which rules that sexual harassment is a form of discrimination and that the employer is responsible for providing a harassment-free workplace.

1989 Susan Brooks, a cashier at Safeway, complains to the Manitoba Human Rights Commission that her employee benefits package discriminates against her by not covering her during a 17-week period around the birth of her baby. The Supreme Court of Canada rules that discrimination on the basis of pregnancy is sex discrimination.



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